- COVER - SHEET

FAX

To: George Triebsch
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Subject: **Fax from bhpbilliton**
Date: June 16, 2004
Pages: 5, including cover

From the desk of...

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June 9, 2004

Director, Minerals Management Service
Attention: Policy and Management Improvement
1849 C Street, NW., Mail Stop 4230,
Washington, DC 20240-0001

Re: MMS Proposal to Consider Pipeline Regulation in the GOM
Federal Register: April 12, 2004 (Volume 69, Number 70)
The Open and Non-Discriminatory Movement of Oil and Gas

Dear Sir/Madam:

BHP Billiton Petroleum (Americas) Inc. ("BHP Billiton") submits for your consideration its comments concerning whether there is a need for pipeline regulation in the Gulf of Mexico.

BHP Billiton is an oil and gas exploration and production company. BHP Billiton is strictly a producer, having no refining facilities. Its only oil and gas assets in the United States are in the offshore Gulf of Mexico.

For some of its production, BHP Billiton owns an interest in the production facilities or gathering lines that handle its production. For other production, BHP Billiton does not have its own production handling facilities or gathering lines, and has contracted with others to provide those services. Therefore, BHP Billiton has no bias toward or against either producers or owners of production facilities or gathering lines when considering this issue.

BHP Billiton concluded that regulation of production facilities and gathering lines is unwarranted, with the possible narrow exception of spindowns. In BHP Billiton's opinion, the realities of offshore development have historically provided, and will continue to provide, an effective and reasonable means of regulating reasonable access to production facilities and gathering lines.

basis, those commenters urged for regulation. The reality is that development of a project does not go forward until a producer has established the economics of the prospect—and that includes early identification of the production platforms and gathering systems that will be utilized, and their costs.

Because of the enormous expense of developing a prospect in the Gulf of Mexico, a lessee who has made a discovery with an exploratory well does not go forward with the full development program unless and until the lessee knows that the prospect will be profitable (or render a certain rate of return on investment.) Besides drilling appraisal wells to delineate the extent of the reserves, the lessee has to know how the production from those wells is going to be processed and transported and how much those services are going to cost. Before implementing a development plan, the lessee will have already decided whether it is building its own platform, or tying back and using excess capacity on an existing platform. If the lessee is tying back to an existing platform, there will be agreement beforehand with the platform owner establishing how much the lessee will be charged for production handling. Likewise, the lessee will have identified the gathering system—whether its own or someone else's—that will transport production. If the lessee is contracting with another company to gather its gas, the lessee and pipeline company will reach agreement-- before development of the prospect-- what the transportation rate will be.

If there is an existing gathering system in the vicinity which has excess capacity that is adequate for the lessee's production, the lessee will probably seek to contract for that excess capacity. If there is no gathering line near the prospect, or inadequate capacity, the lessee either builds its own gathering line, or more likely, enters into an agreement with a pipeline company for the pipeline company to build a gathering line that will transport the prospect's production to a pipeline closer to shore. In either event, the transportation rate will be agreed ahead of time.

A gathering system that has excess capacity has no rational reason to charge the lessee a gathering fee that is so high that the lessee's prospect becomes uneconomic. The rate the transporter charges a lessee for excess capacity on an existing line could as easily be lower than, instead of higher than, the rate being paid by the initial shippers on the line. If a gathering line has excess capacity and the original shippers are providing the pipeline company a reasonable rate of return, the pipeline company may charge the newcomer-lessee a lower rate, because the income received from the newcomer would represent a percentage increase in income. However, if the rate the pipeline company were to quote the newcomer lessee were an unreasonably high rate, there is little doubt that—if the prospect justifies it-- some other pipeline company would offer to build another line to the prospect and charge a rate acceptable to the newcomer lessee. In short, when prospect is worthy of development, there is virtually no likelihood that a lessee will be denied an economic means of getting its gas transported.

The same reasoning applies to production handling facilities. Both types of systems exist because reserves have been found that justify their being built, i.e., the systems are there because the prospects were there first. The discovery of a commercial prospect drives the building of facilities and gathering lines--not the other way around. Further, just as the owners of gathering systems have no rational basis for denying access to excess capacity, platform owners will not let idle capacity go unused, nor will they (unless it makes their own systems uneconomic) attempt to charge rates that make the a prospect uneconomic.

The realities of the business of developing prospects and handling and gathering production are driven in part by the MMS's own regulatory scheme. The OCSLA requires a lessee to submit a development and production plan for approval **prior** to development of a prospect. A development plan, which is submitted to the MMS's Planning Section, must describe all facilities and operations which will be constructed or utilized in the development and production of oil or gas from the lease area. In those plans, the lessee must at least set out the transportation options that are available--if not the actual transportation option selected-- before the MMS will approve the development plan. Thus, even if a lessee were foolhardy enough to want to develop a prospect without first determining the economics of production handling and transportation, the MMS, in order to assure efficient and orderly development of the nation's reserves, has wisely implemented procedures which requires lessees to work out the dynamics of handling and transportation long before they will be utilized.

In short, all of the many economic considerations involved in developing an offshore property are resolved BEFORE, not AFTER, the prospect is developed. No lessee would develop a prospect on the mere hope that adequate facilities and gathering lines will be available at a fair price on the day the lessee is ready to start producing gas. Moreover, the OCSLA and the MMS's own requirements would prevent such an occurrence.

With this in mind, should gathering lines or production facilities be deemed to be "common carriers"? Clearly not. These facilities are **not** built on the theory that "if you build it, they will come." They are built for specific projects and at rates negotiated long before they are ready for production. If facilities are not common carriers, they should not be subject to the "open and non-discriminatory access" type of regulation.

BHP Billiton submits that the reliability of its position is demonstrated by the absence of disputes that have arisen over access or fees for gathering or production handling. BHP Billiton is not aware of ANY dispute of that sort. The sole exception, and the sole circumstance under which BHP Billiton believes that a degree of regulation might be warranted, is the case of a spindown, where the following facts are present: 1) a shipper has already begun transporting gas

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